

CONTIGUOUS FISHERIES ZONE

JANUARY 21, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 11809]

The Committee on Merchant Marine and Fisheries, to which was referred the bill (H.R. 11809) to amend the Act entitled "An Act to establish a contiguous fishery zone beyond the territorial sea of the United States", approved October 14, 1966, to require that the method of straight baselines shall be employed for the purposes of determining the boundaries of such fishery zone, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 2 of the Act entitled "An Act to establish a contiguous fishery zone beyond the territorial sea of the United States", approved October 14, 1966 (16 U.S.C. 1092), is amended to read as follows:

"SEC. 2. (a) The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary, and, in any case in which the straight baseline method is applied for the purpose of determining such zone, includes any waters between the seaward boundary of such zone as determined by application of such method and the seaward boundary of the fisheries zone as determined by application of the low-waterline baseline method.

"(b) For the purposes of this section, the baseline for measuring the breadth of the territorial sea shall be established in accordance with the provisions of the Convention on the Territorial Sea and the Contiguous Zone which came into force on September 10, 1964, and, where applicable, the method of straight baselines shall be employed in drawing the baseline pursuant to article 4 of such convention."

SEC. 2. Such Act of October 14, 1966, is amended by adding at the end thereof the following new sections:

"SEC. 5. Within the two-year period beginning on the date of enactment of this section, the baseline for the purpose of charting the contiguous fisheries zone,

described in subsection (b) of section 2 of this Act, shall be marked on large-scale charts officially recognized by the United States.

"SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act."

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to expand the area of the contiguous fisheries zone off the coast of the United States by using the method of straight baselines in charting the boundaries of the zone.

LEGISLATIVE BACKGROUND

H.R. 2283, the predecessor legislation, was introduced on January 18, 1973, by Mr. Dingell (for himself, Mr. Downing, Mr. McCloskey, Mr. Murphy of New York, and Mr. Anderson of California).

H.R. 11809, an identical bill to H.R. 2283, was introduced on December 5, 1973, by Mr. Dingell (for himself, Mr. Downing, Mr. McCloskey, Mr. Murphy of New York, Mr. Cohen, Mr. Biaggi, Mr. Pritchard, Mr. Anderson of California, Mr. Young of Alaska, Mr. Kyros, Mr. Ginn, and Mr. Studds).

Hearings were held on the legislation by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on June 11, 1973. Federal agencies requested by your Committee to file reports on the legislation were the Department of the Interior, Department of State, Department of Commerce, Department of Defense, and Department of Transportation. The only agency that filed a report on the legislation was the Department of State, which opposed the legislation.

In explaining its opposition to the legislation, the Department said: "In essence, we feel that the legislation would be of little benefit to American fishermen since it would expand U.S. jurisdiction to relatively small new areas. On the other hand, the United States has been strongly opposing unilateral expansions of jurisdictions by others in an effort to solve problems of fisheries management jurisdiction through the U.N. Law of the Sea Conference. Unilateral action by the United States at this time could signal other nations that we no longer oppose such claims, thus increasing the difficulties in obtaining our objectives in the negotiations. Although the risk may not be great, the benefits seem insubstantial and, on balance, we feel that the legislation should not be approved."

After giving careful consideration to the evidence presented at the hearings and the report of the Department of State, your Committee unanimously ordered reported to the House by voice vote, H.R. 11809, with an amendment (which was accomplished by striking out all after the enacting clause and substituting new language).

H.R. 11809, as amended, would overcome one of the major objections expressed by the Department of State witness at the Committee hearings that the charting of the fisheries zone, as called for by the legislation, would cause enclaves. (See the discussion in the section-by-section analysis for more information on this point.) With respect to the argument that the legislation would result in unilateral action, your Committee does not agree with this contention, particularly in view of the fact that the United States is a signatory to the Inter-

national Convention on the Territorial Sea and the Contiguous Zone, which permits the straight baseline method to be used when charting a nation's territorial sea. In fact, the State Department witness at the hearings admitted that the kind of straight baseline suggested by the bill would be permitted under his assessment of international law. The difficulty, he says, is that the issue arises at a sensitive time and may prejudice the United States' position at the Law of the Sea Conference. Your Committee fails to understand this contention in view of the fact that one of the recommendations of the United States, at the Conference, is for a 12-mile territorial sea and we have already agreed with the principle contained in the Convention which permits the use of straight baselines in charting the territorial sea.

Another argument raised by the State Department witness is that the legislation would create an enforcement problem because of the different zones involved; one kind of contiguous zone for certain kinds of laws (customs and sanitation) and another kind of contiguous zone for fisheries. Your Committee fails to see how another set of charts would present enforcement problems. Besides the Department of Transportation, the agency that enforces these two zones, must not realize such a problem would arise since it has not filed a report on the legislation nor furnished a witness at the Committee hearings.

Finally, the State Department witness contended the legislation would violate our Reciprocal Fishing Privileges Agreement with Canada, initially signed in 1970, which permits Canadian fishermen to fish in our contiguous fisheries zone as it existed in 1966. Your Committee fails to see a problem here either, particularly in view of the fact section 1 of the Act recognizes the continuation of traditional fishing rights of foreign States within the zone, as may be recognized by the United States. Certainly, the United States could, by an amendment to that agreement, work out a solution to any problem with Canadian fishermen that may arise as a result of an extension of our exclusive fisheries zone.

BACKGROUND AND NEED FOR THE LEGISLATION

The Convention on the Territorial Sea and the Contiguous Zone, which was agreed to in Geneva in 1958, entered into force for the United States in 1964.

Article I of the Convention provides that the sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea. This sovereignty is to be exercised subject to the provisions of the Convention and to other rules of international law.

Article III provides that, except where otherwise provided in the Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large scale charts officially recognized by the coastal State.

Article IV provides that where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

Where straight baselines are justified by the criteria of the Convention, account may be taken in determining particular baselines of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage. Where the use of straight baselines results in enclosing as internal waters areas which had previously been part of the territorial sea or of the high seas, a right of innocent passage is guaranteed by Article V.

Article VII provides as follows, with respect to bays, the coast of which belongs to a single State: if the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters; where the distance exceeds 24 miles, a straight baseline of 24 miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

Article XXIV provides that in a zone of the high seas contiguous to its territorial sea—which zone may not extend beyond 12 miles from the baseline of the territorial sea (not to be confused with the 12-mile fisheries zone)—a coastal State may exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary regulations within its territory or territorial sea.

Based on information supplied to your Committee by the Library of Congress, the Convention on the Territorial Sea and the Contiguous Zone is self-executing. Consequently, no implementing legislation is necessary and the Convention is therefore part of the law of the land.

In this regard, it is to be noted that the United States has put into effect Article VII of the Convention, which authorizes the closing of bays of not more than 24 miles in breadth. Also, it is to be noted that this legislation would call for the charting of the contiguous fisheries zone only, not the territorial sea. It is only that the baseline from which the territorial sea would be charted, as provided by the Convention, would be employed in charting the fisheries zone.

In 1966, there was established beyond the territorial sea of the United States (out to 3 miles from shore) a fisheries zone (9 miles wide) contiguous to the territorial sea (making a total fisheries zone of 12 miles). The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is 9 nautical miles from the nearest point of the inner boundary.

It is unlawful for any vessel, except a vessel of the United States, or for any master or other person in charge of such a vessel to engage in the fisheries within the territorial waters of the United States or within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters (the contiguous fisheries zone) or to engage in the taking of any Continental Shelf fishery resource which appertains to the United States (as evidenced by the recently enacted law that designates the American lobster as a creature of the Shelf). Violators are subject to a fine of \$100,000 or imprisonment of not more than one year, or both, and the vessel involved, as well as its cargo and catch, are subject to seizure and forfeiture.

Following is a list of nations, furnished your Committee by the Department of State, which either have straight baselines for the

measurement of at least part of the territorial sea and/or contiguous zone or enabling legislation for their creation (the latter category being distinguished by an asterisk) :

Albania	Madagascar
Argentina (historic waters)	Malaysia
Brazil*	Malta*
Burma	Mauritania
Cambodia	Mauritius
Cameroon	Mexico
Canada	Norway
China, Peoples Republic of	Jan Mayen
Cuba	Svalbard
Denmark	Oman
Faeroes	Panama (historic bay)
Greenland	Philippines
Dominican Republic	Portugal (historic waters)
Ecuador	Angola
Egypt	Mozambique
Ethiopia	Portuguese Guinea
Fiji	Saudi Arabia
Finland	Senegal
France	Sudan
Gabon	Sweden
Germany (East)	Syria
Germany (West)	Tanzania (withdrawn; to be re-
Guatemala (historic waters)	issued)
Guinea	Thailand
Haiti	Turkey
Iceland	United Kingdom
Indonesia	USSR*
Iran	Venezuela
Ireland	Vietnam (South)*
Kenya	Yeman (Aden)
Liberia*	Yugoslavia

In addition, two states have claims to extensive "rectangular" sea areas which do not relate to the normal low-water baseline: Maldives and Tonga.

Your Committee would like to point out that included in this list of more than 50 nations are such countries as Canada and Mexico (both of which border the United States), Norway, Iceland, Cuba, Ecuador, Brazil, Venezuela, United Kingdom, and USSR.

The need for legislation arises from the fact that over the past few years there has been a considerable increase in the taking of fishery resources by foreign vessels within the 12 mile exclusive fisheries zone of the United States. In particular, there has been a tremendous increase in the taking of these resources by foreign vessels beyond, but in the vicinity of the outer limits of the fisheries zone. For instance, in May of 1973, about 860 foreign fishing vessels were sighted off the coasts of the United States, as compared to 770 in May of 1972. In June of 1973, about 930 vessels were sighted as compared to 770 in June of 1972. This increase has taken place mostly off the Northwest

and Mid-Atlantic States and off the coasts of Alaska and the North Pacific.

While our Nation's fishery resources are bountiful, except for a few depressed fisheries, they are not unlimited and must be protected and intelligently conserved to meet future demands of our fishing industry and supply the needs of our citizens. Since more than 80 percent of the total U.S. catch is taken within 12 miles of our shores, it is imperative that these highly productive areas be protected from ruthless exploitation by foreign fishing fleets.

In addition to its impact upon our natural resources, the increasing activity and presence of these foreign fleets have created other problems. For instance, most, if not all of these foreign vessels, are larger than those employed by U.S. fishermen and have hampered the fishing activities of our own fishermen. Also, the problems of damage to both fishing gear and vessels of U.S. fishermen have increased proportionately as foreign fleets increase in number and activity in these waters.

As presently constituted, there are approximately 38,000 square nautical miles within the territorial sea of the United States and approximately 120,000 square nautical miles in the contiguous fisheries zone. No one really knows at this time the effect the legislation would have on the contiguous fisheries zone should the method of straight baselines be utilized in charting the zone. In fact, no one will ever know until the baselines are drawn and measurements made. The effect would be greatest in areas where there are deep indentations which are not considered by the United States under its current interpretation as bays. For example, Cook Inlet and several of the large basins on the Alaskan west coast could be enclosed by straight baselines, but are not now deemed to be bays. Also, by connecting a series of islands off the coast of Massachusetts by use of the method of straight baselines, areas considered as beyond the fisheries zone as now constituted (using the low-waterline baseline method) would become part of such zone.

Your Committee has received a number of estimates as to the effect of the legislation on the contiguous fisheries zone. A high level Coast Guard witness at Committee hearings in Alaska on commercial fisheries problems in 1969, estimated there would be an overall increase of approximately 10 percent. A representative of the Department of State at the Committee hearings on this legislation estimated there would be an overall increase of approximately 2 percent. This witness further estimated that the zone off the coast of Maine would be increased about 5 percent.

Be that as it may, your Committee would welcome any increase in the size of the zone as a result of the passage of this legislation. There is ample evidence that some valuable species of fish and marine life which inhabit the 12 mile zone, and just beyond in certain areas, are in danger of being seriously depleted, and in some cases, of becoming extinct, because of the techniques employed by foreign fleets within these areas. Overfishing and the indiscriminate taking of fishlings and potential breeders are examples of foreign fishing operations which hopefully would be eliminated should this legislation be enacted into law and rigidly enforced.

WHAT THE BILL DOES: SECTION-BY-SECTION ANALYSIS

As indicated in the legislature background of this report, your Committee ordered reported to the House H.R. 11809, with an amendment, which was accomplished by striking out all after the enacting clause and substituting new language.

There follows a section-by-section summary of H.R. 11809, as amended, accompanied by discussion where appropriate.

SECTION 1

Section 1 of Public Law 89-658 (16 U.S.C. 1091) established a fisheries zone contiguous to the territorial sea of the United States. The United States exercises the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea, subject to the continuation of territorial fishing by foreign states within this zone, as may be recognized by the United States.

Section 2 of the Act provides that the fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary.

Section 1 of the bill would amend section 2 of the Act to make existing law of this section, section 2(a) and, in addition, to provide that, in any case in which the straight baseline method is applied (as provided in section 2 of the bill) for the purpose of determining the fisheries zone, such zone would include any waters between the seaward boundary of such zone as determined by application of such method and the seaward boundary of the fisheries zone, as determined by application of the low-waterline baseline method.

This language was added by your Committee to the bill, as ordered reported, to make it clear that any enclaves that may be created when charting the zone will be considered as part of such zone. In other words, the Department of State witness at the hearings expressed concern that an ambiguous area (called enclaves) might be created between the territorial sea (which would not be charted) and the newly charted contiguous fisheries zone, which would be extended seaward in certain areas. Although the witness indicated the entire problem appeared to be technical in nature, your Committee deemed it appropriate to eliminate this possible ambiguity and so provided in the bill, as ordered reported.

Section 1 of the bill also would add a new subsection (b) to section 2 of the Act to provide, that for the purposes of this section, the baseline for measuring the breadth of the territorial sea shall be established in accordance with the provisions of the Convention on the Territorial Sea and the Contiguous Zone and, where applicable, the method of straight baselines shall be employed in drawing the baseline pursuant to Article 4 of such Convention.

As previously indicated in this report, the United States is a signatory to this Convention, and it came into force for the United States in 1964. Although permitted to do so, the United States has not implemented the method of straight baselines in charting its territorial sea (as provided by Article 4). However, the United States has

implemented Article 7, which permits a 24-mile closing line for bays.

It is to be noted that this legislation does not call for the charting of the territorial sea. It only provides that the concept for charting the territorial sea, as provided by Article 4 of the Convention, will be utilized when charting the contiguous fisheries zone.

SECTION 2

Section 2 of the bill would add new sections 5 and 6 to the Act.

New section 5 of the Act, as provided by this section of the bill, would require that within two years of the date of enactment of this section, the baseline for the purpose of charting the contiguous fisheries zone shall be marked on large-scale charts officially recognized by the United States.

It is to be noted that the bill is silent as to which agency would chart the fisheries zone. Since the National Ocean Survey (NOS) of the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, has the statutory responsibility for charting the United States coastline, including the high-water line and the low-water line, your Committee would like to designate that agency as the agency to chart the contiguous fisheries zone.

However, your Committee would like to make it clear that it expects NOS to consult with other interested Federal agencies as to the appropriateness of using straight baselines in certain situations.

In this regard, in considering the effect of the use of straight baselines as mandated by the bill, your Committee has reviewed a number of examples illustrating the location and manner in which such baselines might be drawn. Since the purpose of this legislation is to protect and enhance the fisheries resources appertaining to the Coast of the United States, within the framework of domestic law and the Convention on the Territorial Sea and the Contiguous Zone, your Committee would like to emphasize that it expects the Federal agencies concerned to take a liberal interpretation of domestic law and the Convention, and when charting the fisheries zone the baselines mandated by the legislation should be drawn with a view toward extending domestic jurisdiction to the maximum extent possible. Likewise, your Committee would like to call to the particular attention of the Federal agencies concerned the Anglo-Norwegian Fisheries case. In this case, the International Court of Justice, in a historic decision, upheld Norway's method of delimiting its exclusive fisheries zone by drawing straight baselines along the seaward projections of a number of islands and rocks off the Coast of Norway. The court did not recognize any mathematical limits to the length of individual lines, but approved straight baselines of varying lengths, the longest is that particular situation being 44 miles.

Your Committee would like to make it clear that State law and jurisdiction is in no way affected by this legislation. State law and Federal law remain the same in regard to their respective jurisdictions over fisheries in the territorial sea and the contiguous fisheries zone.

Section 6 of the bill would authorize to be appropriated such sums as may be necessary to carry out the provisions of the Act.

COST OF THE LEGISLATION

In the event this legislation is enacted into law, it is estimated by your Committee there would be no additional cost to the Federal Government other than minimal administrative cost.

DEPARTMENTAL REPORTS

H.R. 2283 (a similar bill to H.R. 11809) was the subject of a report from the State Department which follows herewith:

DEPARTMENT OF STATE,
Washington, D.C., June 25, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: The Secretary has asked me to reply to your letter of February 7, 1973, requesting our views on H.R. 2283, an Act to amend the Act entitled "An Act to establish a contiguous fishery zone beyond the territorial sea of the United States." The purpose of the Act is to require the use of the method of straight baselines for the purposes of determining the boundaries of the Contiguous Fisheries Zone.

The Department of State testimony on June 11, 1973, before the Subcommittee on Fisheries and Wildlife Conservation and the Environment set forth the views of the Executive Branch in detail. In essence, we feel that the legislation would be of little benefit to American fishermen since it would expand U.S. jurisdiction to relatively small new areas. On the other hand, the United States has been strongly opposing unilateral expansions of jurisdiction by others in an effort to solve problems of fisheries management jurisdiction through the U.N. Law of the Sea Conference. Unilateral action by the United States at this time could signal other nations that we no longer oppose such claims, thus increasing the difficulties in obtaining our objectives in the negotiations. Although the risk may not be great, the benefits seem insubstantial and, on balance, we feel that the legislation should not be approved.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 14, 1966

(80 Stat. 908, 16 U.S.C. 1091-1094)

AN ACT

To establish a contiguous fishery zone beyond the territorial sea of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is established a fisheries zone contiguous to the territorial sea of the United States. The United States will exercise the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea, subject to the continuation of traditional fishing by foreign states within this zone as may be recognized by the United States.

[SEC. 2. The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary.]

SEC. 2. (a) *The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary, and, in any case in which the straight baseline method is applied for the purpose of determining such zone, includes any waters between the seaward boundary of such zone as determined by application of such method and the seaward boundary of the fisheries zone as determined by application of the low-waterline baseline method.*

(b) *For the purposes of this section, the baseline for measuring the breadth of the territorial sea shall be established in accordance with the provisions of the Convention on the Territorial Sea and the Contiguous Zone which came into force on September 10, 1964, and, where applicable, the method of straight baselines shall be employed in drawing the baseline pursuant to article 4 of such convention.*

SEC. 3. Whenever the President determines that a portion of the fisheries zone conflicts with the territorial waters or fisheries zone of another country, he may establish a seaward boundary for such portion of the zone in substitution for the seaward boundary described in section 2.

SEC. 4. Nothing in this Act shall be construed as extending the jurisdiction of the States to the natural resources beneath and in the waters within the fisheries zone established by this Act or as diminishing their jurisdiction to such resources beneath and in the waters of the territorial seas of the United States.

SEC. 5. *Within the two-year period beginning on the date of enactment of this section, the baseline for the purpose of charting the contiguous fisheries zone, described in subsection (b) of section 2 of this Act, shall be marked on large-scale charts officially recognized by the United States.*

SEC. 6. *There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.*



